

Applicants further respectfully request a refund of the petition fee in anticipation that the instant Petition will be granted.

### **REMARKS**

United States nonprovisional patent application serial number 10/071,032, was filed February 8, 2002. Applicants received an UPDATED FILING RECEIPT, mailed September 24, 2002, confirmation number 3659, on October 2, 2002, which indicated that the application had been "placed under Secrecy Order."

If the Hon. Commissioner for Patents does not accept the instant petition on the basis outlined below in Item (1), Applicants request reconsideration on the basis outlined further below in Item (2).

### ***PETITION UNDER 37 C.F.R. § 5.4 FOR RECISSION OF SECRECY ORDER***

The basis for Applicants' petition under 37 C.F.R. §5.4 for recission of the secrecy order in the above-recited application is preferably:

- (1) Applicants timely filed an appropriate response to the Notice wherein they declared that the invention was not made (conceived or first actually reduced to practice) under nor was there any relationship of the invention to the performance of any work under any contract of NASA, and, accordingly, the Secrecy Order has been improperly applied;  
or, alternatively,
- (2) Applicants deem the Secrecy Order to be ineffectual or futile in view of the publication of a corresponding PCT International Application no. WO 02/064599.

Applicants reasoning for the above bases is discussed below in Items (1) and (2), respectively.

(1) Applicants timely filed an appropriate response to the Notice wherein they declared that the invention was not made (conceived or first actually reduced to practice) under nor was there any relationship of the invention to the performance of any work under any contract of NASA:

Applicants received an informal notice mailed June 26, 2002 ("Notice", COPY ENCLOSED as Exhibit B), from Licensing and Review which alleged that the subject matter of the invention in the above-identified application "appears to: 'have significant utility in the conduct of aeronautical and space activities' as recited in 42 U.S.C. 2457 (National Aeronautics and Space Administration (NASA))."

The Notice further alleged that "no patent can issue on this application unless applicant(s) file a statement (under oath or in the form of a declaration as provided by 37 CFR 1.68) setting forth (1) the full facts concerning the circumstances under which the invention was made and conceived and (2) the relationship (if any) of the invention to the performance of any work under any contract or other arrangement with the Agency (ies) noted above.

The Notice set a deadline for response of forty-five days from the mailing date of the Notice, which deadline was August 10, 2002.

On July 23, 2002, Applicants filed by Express Mail Post Office to Addressee an appropriate response to the Notice consisting of:

- (1) a letter dated July 23, 2002 (Letter, COPY ENCLOSED as Exhibit C) to the Commissioner for Patents, Attention Licensing and Review,
- (2) a separate paper which was a Declaration under 37 CFR 1.68 ("Declaration", COPY ENCLOSED as Exhibit D) that set forth (1) the full facts concerning the circumstances under which the invention was made and conceived and (2) the relationship (if any) of the invention to the performance of any work under any contract or other arrangement with the Agency noted above, and contained a copy of the Notice;

- (3) a transmittal form (COPY ENCLOSED as Exhibit E);
- (4) a Certificate of Mailing by Express Mail Post Office to Addressee (COPY ENCLOSED as Exhibit F); and
- (5) a return postcard.

In the Declaration, the Applicants declared that the invention was not made (conceived or first actually reduced to practice) under nor was there any relationship of the invention to the performance of any work under any contract of NASA.

In view of Applicants timely submission of the above Declaration, Applicants respectfully requested in the Letter that the Hon. Commissioner of Patents determine that a patent can issue on this application.

On August 1, 2002, Applicants received the return postcard with a stamp "RECEIVED JUL 26 2002 LICENSING & REVIEW" stamped thereon (COPY ENCLOSED as Exhibit G).

On October 2, 2002, Applicants received the Updated Filing Receipt indicating that the application was "placed under Secrecy Order."

However, in view of Applicants timely submission of the Declaration in response to the Notice, Applicants deem the Secrecy Order was improperly applied.

Alternatively, if the Hon. Commissioner for Patents does not accept the instant petition on the basis outlined above in Item (1), Applicants request reconsideration on the basis outlined below in Item (2).

- (2) Applicants deem the Secrecy Order to be ineffectual or futile in view of the publication of a corresponding PCT International Application no. WO 02/064599:

Applicants' priority application, United States provisional patent application no. 60/268,780, filed February 14, 2001, was granted a foreign filing license on June 1, 2001, as reported on a Filing Receipt mailed June 4, 2001, confirmation no. 1867 (COPY ENCLOSED as Exhibit H).

Applicants filed a PCT International patent application no. PCT/02/00313, filed January 30, 2002, corresponding to the instant application. PCT International patent application no. PCT/02/00313 published on August 22, 2002, as WO 02/064599 (COPY ENCLOSED as Exhibit I).

In view of the publication of corresponding PCT International patent application no. PCT/02/00313 on August 22, 2002, as WO 02/064599, Applicants deem the Secrecy Order in the instant application is ineffectual or futile.

In view of Applicants' petition under 37 C.F.R. §5.4 for rescission of the secrecy order and the above remarks, Applicants deem that the Secrecy Order related to the instant application has been improperly applied. Alternatively if the Hon. Commissioner for Patents does not agree that the Secrecy Order related to the instant application has been improperly applied, Applicants deem that the Secrecy Order related to the instant application is ineffectual or futile. In any event, Applicants respectfully request the Hon. Commissioner for Patents to grant the instant petition and allow the instant application to publish and a patent to issue from the application.

Applicants note that the instant petition under 37 C.F.R. § 5.4 includes the items enclosed herewith as Exhibits A to I.

The Hon. Commissioner for Patents is hereby authorized to charge any fees required for this communication, or credit any overpayment of fees, to deposit account 23-0455.

The undersigned would welcome a telephone call from the Commissioner or his representative to discuss any matters.

Date: January 7, 2003

Respectfully submitted,

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Enc. EXHIBIT A (copy of Updated Filing Receipt, 2 pages/2 sheets)  
EXHIBIT B (copy of Notice, 2 pages/1 sheet)  
EXHIBIT C (copy of Letter, 3 pages/3 sheets)  
EXHIBIT D (copy of Declaration under 37 CFR §1.68, 3 pages/3 sheets)  
EXHIBIT E (copy of Transmittal, 1 page/1 sheet)  
EXHIBIT F (copy of Certificate of Mailing by Express Mail, 1 page/1 sheet)  
EXHIBIT G (copy of stamped return postcard, 2 pages/2 sheets)  
EXHIBIT H (copy of provisional Filing Receipt, 2 pages/2 sheets)  
EXHIBIT I (copy of WO 02/064599, 249 pages/125 sheets)

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